

OPEN MEETING ITEM

ORIGINAL



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**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL  
Executive Secretary  
Arizona Corporation Commission

22

**DOCKETED**

JAN 18 2005

DATE: January 18, 2005

DOCKETED BY	<i>CM</i>
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DOCKET NOS: E E-04230A-04-0798 and E-04230A-04-0824

TO ALL PARTIES: E-04204A-04-0824  
E-01750A-04-0824

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

MOHAVE ELECTRIC COOPERATIVE, INC. v.  
UNISOURCE ENERGY CORPORATION  
(COMPLAINT)

UNS ELECTRIC, INC.  
(CC&N TRANSFER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 21, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

*[Signature]*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

2005 JAN 18 P 2:00

RECEIVED

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   COMMISSIONERS

3   JEFF HATCH-MILLER, Chairman  
4   WILLIAM A. MUNDELL  
5   MARC SPITZER  
6   MIKE GLEASON  
7   KRISTIN K. MAYES

8   IN THE MATTER OF THE COMPLAINT OF  
9   MOHAVE ELECTRIC COOPERATIVE, INC.  
10   AGAINST UNISOURCE ENERGY  
11   CORPORATION.

DOCKET NO. E-04230A-04-0798

12   IN THE MATTER OF THE APPLICATION OF  
13   UNS ELECTRIC, INC. FOR AN ORDER  
14   APPROVING A TRANSFER OF A PORTION OF  
15   A CERTIFICATE OF CONVENIENCE AND  
16   NECESSITY.

DOCKET NO. E-04204A-04-0824  
DOCKET NO. E-04230A-04-0824

DECISION NO. \_\_\_\_\_

**EMERGENCY ORDER FOR  
PROVISION OF ELECTRIC  
SERVICE**

17   Open Meeting

18   \_\_\_\_\_  
19   Phoenix, Arizona

20   **BY THE COMMISSION:**

21                                   **FINDINGS OF FACT**

22           1.     On November 5, 2004, Mohave Electric Cooperative, Inc. ("Mohave") filed with the  
23   Arizona Corporation Commission ("Commission") a Complaint in Docket No. E-04230A-04-0798  
24   ("Complaint Docket") against UniSource Energy Corporation ("UniSource") alleging, among other  
25   things, that UniSource has improperly refused to provide wholesale service to Mohave under an Open  
26   Access Transmission Tariff ("OATT"), and that UniSource has refused to negotiate in good faith a  
27   system-wide border area agreement with Mohave. Mohave is a not for profit rural electric  
28   cooperative that provides electric service in portions of Mohave, Yavapai, and Coconino counties.  
Mohave claims in its Complaint that UniSource's actions have rendered Mohave unable to provide  
electric service in an economically feasible manner to a customer, Central Trucking, Inc. ("CTI"),  
that seeks to construct a building to conduct business in Mohave's certificated service area<sup>1</sup>.

<sup>1</sup> According to Mohave, it has agreed to provide service to CTI upon payment of approximately \$600,000, which is the cost for Mohave to extend its facilities to CTI's location.

1           2.       On November 15, 2004, UNS Electric, Inc. ("UNS") filed with the Commission an  
2 application in Docket Nos. E-04204A-04-0824 and E-01750A-04-0824 ("Transfer Dockets") seeking  
3 to have territory that was previously within the certificated service territory of UNS' predecessor,  
4 Citizens Utilities Company ("Citizens"), "revert" to UNS<sup>2</sup>. Mohave currently holds the Certificate of  
5 Convenience and Necessity ("CC&N" or "certificate") for the territory that is in dispute, and in  
6 which CTI's property is located, pursuant to Decision No. 58798 (October 14, 1994)<sup>3</sup>. UNS  
7 concedes that the disputed territory is currently within Mohave's CC&N area, but contends that  
8 Mohave was granted the portion of the service area in question solely for the purpose of serving a  
9 specific customer, North Star Steel Company ("North Star"), which is no longer in business. UNS  
10 argues that because the disputed area was previously served by Citizens, and North Star is no longer  
11 in business, the CC&N area in which CTI is located should revert to UNS as Citizens' successor in  
12 interest.

13           3.       On November 29, 2004, UNS filed an Answer to the Complaint and Motion for  
14 Dismissal. UNS reiterated the claims made in the Transfer Dockets that the agreement between  
15 Citizens and Mohave to transfer the disputed area was for the provision of service to the North Star  
16 plant. UNS denied the material allegations in the Complaint and asserted that it is willing and able to  
17 provide immediate electric service to CTI with facilities that are adjacent to CTI's property.

18           4.       On December 30, 2004, CTI filed letters in both the Complaint and Transfer Dockets  
19 seeking intervention in both proceedings<sup>4</sup> and requesting that the boundary dispute between Mohave  
20 and UNS be resolved promptly so that CTI can construct its facility and conduct its business. CTI  
21 claims that it initially requested electric service in May, 2004, but due to its inability to obtain service  
22 from either Mohave or UNS, CTI has incurred considerable expense by being forced to purchase and  
23 operate a generator to provide electricity to its mobile office.

24           5.       On January 3, 2005, Mohave separately filed in the Complaint Docket a Motion for  
25

26 <sup>2</sup> UNS is a subsidiary of UniSource that provides electric service in Mohave County. UNS acquired the Certificate of  
Convenience and Necessity of Citizens' Mohave Electric Division pursuant to Decision No. 66028 (July 3, 2003).

27 <sup>3</sup> In Decision No. 58798, the Commission transferred the portion of Citizens' CC&N to Mohave described in that Order  
and stated that the transferred CC&N area "shall not revert to Citizens Utilities Company under any circumstances  
28 without prior Commission approval" (*Id.* at 6).

<sup>4</sup> CTI was granted intervention in both dockets during a January 12, 2005 Procedural Conference.

1 Leave to File First Amended Complaint and a Response to Motion for Dismissal. In its Amended  
2 Complaint, Mohave added UNS as a Respondent to the Complaint. In its Response, Mohave argues  
3 that it would be improper to dismiss the Complaint given the disputed issues that exist. Mohave also  
4 renewed its request for the Commission to authorize a system-wide borderline agreement that would  
5 enable Mohave to promptly serve CTI and other similarly situated customers.

6       6.       On January 4, 2005, Procedural Orders were issued in the Complaint and Transfer  
7 Dockets scheduling a Procedural Conference in both dockets for January 12, 2005. As stated in the  
8 Procedural Orders, the purpose of the Procedural Conference was to discuss "procedural issues,  
9 including scheduling of testimony and hearing dates, *as well as whether settlement of the issues*  
10 *raised in the Complaint may be able to be resolved through mediation with Staff's assistance*"  
11 (emphasis added).

12       7.       On January 4, 2005, CTI filed a letter in the Transfer Dockets reiterating its frustration  
13 with being unable to receive electric service for its business and stating that it is "being held hostage,  
14 and being used as a pawn" due to the dispute between Mohave and UNS. CTI requested an  
15 emergency session of the Commission to resolve the dispute and allow CTI to obtain electric service  
16 in order to operate its business. A copy of CTI's letter was also docketed in the Complaint Docket on  
17 January 5, 2005.

18       8.       On January 11, 2005, UNS filed a letter sent to Mohave requesting that Mohave enter  
19 into an Electric Service Authorization Agreement that would allow UNS to immediately provide  
20 service to CTI, on an interim basis, during the pendency of the Complaint and Transfer Dockets. The  
21 UNS letter stated that if Mohave accepted its interim service proposal, neither party would be  
22 waiving its rights or arguments in either of the pending proceedings.

23       9.       On January 12, 2005, the Procedural Conference was held as scheduled. During the  
24 conference, a discussion with the parties was conducted regarding the possible settlement of issues  
25 and how to achieve an interim solution to CTI's immediate need for electric service. Counsel for  
26 UNS represented that it could provide service to CTI within approximately 24 hours if authorized to  
27 do so by the Commission. Counsel for Mohave indicated that he had not had an opportunity to  
28 discuss the interim service proposal with Mohave's principals and requested additional time to do so

1 before responding to the proposal. The administrative law judge scheduled a telephonic status  
2 conference for January 14, 2005 to afford Mohave an additional opportunity to respond to the UNS  
3 proposal.

4 10. On January 14, 2005, shortly before commencement of the status conference, Mohave  
5 filed a letter and "Conditional Consent" which set forth terms and conditions under which Mohave  
6 would agree that UNS could serve CTI. In relevant part, Mohave's proposal provided as follows:

- 7 a. Mohave consented to UNS providing service to CTI pursuant to a
- 8 Commission Order authorizing provision of such service;
- 9 b. Mohave's consent would not prejudice or waive any claim it may
- 10 have in the pending Complaint or Transfer Dockets;
- 11 c. UNS agrees to work in good faith with Mohave to develop a
- 12 mutually acceptable system-wide borderline agreement as soon as
- 13 possible that would render the conditional consent unnecessary;
- 14 d. UNS agrees to work in good faith on Mohave's request for a
- 15 source of power from UNS that would render the conditional
- 16 consent unnecessary;
- 17 e. The consent would automatically expire the earlier of 9 months
- 18 from the date of the consent offer or upon completion of the other
- 19 circumstances described above that would render the conditional
- 20 consent unnecessary.

21 11. The January 14, 2005 telephonic status conference was held as scheduled. During the  
22 ensuing discussion, counsel for UNS and Staff expressed concerns with several of the conditions  
23 proposed by Mohave. Specifically, UNS believes that the proposal would allow Mohave to maintain  
24 all of its rights in the pending cases before the Commission while, in effect, requiring UNS to waive  
25 its rights and arguments in both dockets. UNS claims that the proposed conditions requiring UNS to  
26 negotiate with Mohave regarding a system-wide borderline agreement and for a source of power for  
27 Mohave would essentially void the very claims UNS has raised with respect to the Complaint and  
28 Transfer Dockets<sup>5</sup>. Counsel for both UNS and Staff stated that the proposed automatic expiration of  
the consent is inappropriate and that any interim provision of service should be maintained until the  
pending dockets have been resolved.

12. The Commission's authority to act to protect the public interest is derived from the

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<sup>5</sup> On January 18, 2005, UNS filed a letter sent to Mohave explaining the basis of UNS' opposition to the Mohave proposal.

1 broad and plenary powers described in the Arizona Constitution. Article 15, §3, of the Arizona  
2 Constitution provides in relevant part:

3           The Corporation Commission shall have full power to, and shall, prescribe  
4           just and reasonable classifications to be used and just and reasonable rates  
5           and charges to be made and collected, by public service corporations  
6           within the State for service rendered therein, and make reasonable rules,  
7           regulations, and orders, by which such corporations shall be governed in  
8           the transaction of business within the State, and may prescribe the forms  
9           of contracts and the systems of keeping accounts to be used by such  
          corporations in transacting such business, and *make and enforce*  
          *reasonable rules, regulations, and orders for the convenience, comfort,*  
          *and safety, and the preservation of the health, of the employees and*  
          *patrons of such corporations;....*(emphasis added)

10           13.    The Commission's obligation to act in the public interest, by taking into account the  
11           "public convenience and necessity," is also set forth in various statutes. For example, A.R.S. §40-  
12           282(C) states that the Commission, in evaluating an application for a CC&N, "may attach to the  
13           exercise of rights granted by the certificate *terms and conditions it deems that the public convenience*  
14           *and necessity require*" (emphasis added). *See, also*, A.R.S. §40-332(A), which requires the  
15           Commission to consider the public convenience and necessity regarding the use of one public service  
16           corporation's equipment by another public service corporation.

17           14.    Upon consideration of the various pleadings and arguments raised in the above-  
18           captioned dockets, we believe that an emergency currently exists that requires immediate action. It is  
19           undisputed that CTI has attempted to receive electric service since May 2004 from either Mohave or  
20           UNS. We have attempted to allow the parties to resolve this dispute amicably but their efforts to  
21           negotiate a solution have been unsuccessful, despite the efforts of our Staff to mediate the ongoing  
22           dispute between the companies. It is simply unacceptable that any customer should be required to  
23           wait this length of time to receive electric service.

24           15.    Through the letters filed in the dockets, and statements made at the Procedural  
25           Conferences, we recognize the frustration and desperation expressed by CTI's representative due to  
26           the company's inability to obtain electric service under terms that would enable it to proceed with  
27           construction of planned facilities in Mohave County. We will therefore order UNS to immediately  
28           provision service to CTI, on an interim basis, until the issues raised in the Complaint and Transfer

1 Dockets have been resolved. UNS shall provision service to CTI in a manner that will not jeopardize  
2 the ability of Mohave to serve CTI in the future, in the event Mohave would prevail in the pending  
3 cases. We wish to make clear that this interim solution shall not prejudice any claims or arguments  
4 that either Mohave or UNS may have regarding the pending dockets. Our determination in this  
5 Decision that an emergency exists requiring immediate action should not be construed as an  
6 indication of how these matters may ultimately be resolved following a full presentation of evidence  
7 and legal arguments in these dockets. However, due to the public service corporations' inability to  
8 resolve this matter, pending a final decision in these proceedings we will order that service be  
9 provided immediately to a customer that has essentially been "held hostage" for more than 6 months.  
10 UNS shall provide the ordered interim service to CTI based on UNS' tariffed rates and charges on file  
11 with the Commission. We also direct UNS and Mohave to implement this Decision and negotiate the  
12 disputed issues in both dockets in good faith pending completion of the litigated issues in the  
13 Complaint and Transfer Dockets.

#### 14 CONCLUSIONS OF LAW

15 1. Mohave Electric Cooperative, Inc. and UNS Electric, Inc. are public service  
16 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-246, 40-  
17 281, 40-282 and 40-285.

18 2. Mohave and UNS were put on notice that the Commission would take prompt action  
19 in these dockets if the companies were unable to negotiate a solution that would provide immediate  
20 electric service to CTI.

21 3. The Commission has jurisdiction over Mohave and UNS, and the subject matter of the  
22 above-captioned Complaint and Transfer Dockets.

23 4. Pursuant to the authority vested in the Commission under Article XV, §3, of the  
24 Arizona Constitution, to make and enforce reasonable rules, regulations, and orders for the  
25 convenience, comfort, and safety of the customers of Mohave and UNS, it is reasonable and  
26 appropriate under the unique facts and circumstances presented to direct UNS to provision immediate  
27 electric service to CTI, on an interim basis, until the above-captioned Complaint and Transfer  
28 Dockets have been resolved and without prejudice to any claims or arguments that either Mohave or

1 UNS may have in those dockets.

2 5. The determination that an emergency exists requiring immediate action to protect the  
3 public interest shall not be construed as an indication of how these matters may ultimately be  
4 resolved following a full presentation of evidence and legal arguments in the above-captioned  
5 dockets.

6 **ORDER**

7 IT IS THEREFORE ORDERED that UNS Electric, Inc. shall immediately provision electric  
8 service to CTI, on an interim basis, at its tariffed rates and charges on file with the Commission, until  
9 the issues raised in the above-captioned Complaint and Transfer Dockets have been resolved. UNS  
10 Electric, Inc. shall initiate such service within three (3) business days of the effective date of this  
11 Decision.

12 IT IS FURTHER ORDERED that this interim solution shall not prejudice any claims or  
13 arguments that either Mohave Electric Cooperative, Inc. or UNS Electric, Inc. may have regarding the  
14 pending Complaint and Transfer Dockets. Our determination in this Decision that an emergency  
15 exists requiring immediate action to protect the public interest should not be construed as an  
16 indication of how these matters may ultimately be resolved following a full presentation of evidence  
17 and legal arguments in these dockets.

18 IT IS FURTHER ORDERED that UNS Electric, Inc. and Mohave Electric Cooperative, Inc.  
19 are directed to implement this Decision and negotiate the disputed issues in both dockets in good faith  
20 pending completion of the litigated issues in the Complaint and Transfer Dockets.

21 IT IS FURTHER ORDERED that Central Trucking, Inc. is granted intervention in both of the  
22 above-captioned dockets.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...



1 IT IS FURTHER ORDERED that the Hearing Division is directed to issue a Procedural Order  
2 for the purposes of scheduling submission of testimony, hearing dates, and any other necessary  
3 procedural matters.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6  
7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

10  
11 COMMISSIONER

COMMISSIONER

12 - IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Secretary of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_ day of \_\_\_\_\_, 2005.

15  
16 BRIAN C. McNEIL  
17 EXECUTIVE SECRETARY

18 DISSENT \_\_\_\_\_  
19

20 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR:

UNS ELECTRIC, INC. AND MOHAVE ELECTRIC  
COOPERATIVE, INC.

2  
3 DOCKET NOS.:

E-04204A-04-0824, E-01750A-04-0824 and E-04230A-  
04-0798

4  
5 Michael A. Curtis  
6 William P. Sullivan  
7 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, P.L.C.  
8 2712 North Seventh Street  
9 Phoenix, AZ 85006-1090

10 Thomas H. Campbell  
11 Michael T. Hallum  
12 LEWIS & ROCA LLP  
13 40 N. Central Avenue  
14 Phoenix, AZ 85004

15 Michelle Livengood  
16 Legal Department  
17 Tucson Electric Power Company  
18 One South Church Avenue  
19 P.O. Box 711  
20 Tucson, AZ 85702-3664  
21 Attorneys for UNS Electric, Inc.

22 Terrence G. O'Hara  
23 Central Trucking, Inc.  
24 11930 N. Hartman Dr.  
25 Edinburgh, IN 46124

26 Christopher Kempley, Chief Counsel  
27 Legal Division  
28 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007